

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
CIVIL ACTION NO. 5:14-CV-00448-BO

MOISES ENOT VELASQUEZ )  
MONTEROSSA, on behalf of himself and )  
all others similarly situated, )  
Plaintiff, )  
vs. )  
MI CASITA RESTAURANTS a/k/a MI )  
CASITA RESTAURANTE MEXICANO; )  
JM MACIAS, INC.; JFC LLC; MACIAS )  
LLC; MACIAS ENTERPRISE LLC; MC )  
MANAGEMENT LLC; MEXICAN )  
FOODS EXPRESS, INC.; PIRAMIDE )  
MEXICAN FOODS, INC.; VIA 216 NC )  
LLC; JESUS MACIAS; and JUAN )  
MACIAS, )  
Defendants. )

**PLAINTIFF'S MOTION AND SUPPORTING MEMORANDUM FOR LEAVE TO FILE  
EXCESS PAGES IN HIS REPLY IN SUPPORT OF  
HIS MOTION FOR CONDITIONAL CERTIFICATION PURSUANT TO THE FLSA,  
AND FOR CLASS CERTIFICATION UNDER FED. R. CIV. P. 23**

Plaintiff Moises Enot Velasquez, on behalf of himself and others similarly situated respectfully moves the Court for leave to file a brief in Reply to Defendants' Response to Plaintiff's Motion for Conditional Certification pursuant to the FLSA and Class Certification under Fed. R. Civ. P. 23 in excess of the (10) page limit set forth in the Local Rules of the Court. In support of this motion, Plaintiff states as follows:

1. On September 14, 2015, Plaintiff filed his Motion to Certify Class pursuant to the FLSA and for Class Certification under Fed. R. Civ. P. 23 (The "Motion").
2. On October 23, 2015, Defendants filed their Response to the Motion in which they filed eleven (11) new declarations into this matter's early Record. These declarations were not previously provided to Plaintiff or his counsel and come from individuals who were not

previously disclosed as individuals with knowledge of the matters in dispute in this case.

3. Plaintiff's Reply to Defendants' Response is now due November 20, 2015.

Because this deadline is pending, Plaintiff requests expedited consideration of this page limit extension request.

4. In order to address the multitude of complex legal issues involved in this case brought under both the FLSA and Fed. R. Civ. P. 23, those issues challenged in Defendants' Response, as well as Defendants' newly presented evidence, Plaintiff will need more than the ten (10) pages provided for by the Local Rules. Plaintiff is endeavoring to respond as succinctly as possible and modestly requests an additional 10 pages for his Reply to Defendants' Response, for a total of 20 pages. Such an extension is necessary so that Plaintiff can adequately provide the Court with a Reply brief that will assist it and the Parties to better understand the issues in dispute regarding Plaintiff's Motion and further the development of this matter's early Record.

5. Plaintiff's ability to adequately and fairly respond to Defendants' Response is critical, given the numerous legal and factual disputes Defendants raise in their Response.

These include, but are not limited to, the following:

- a. Defendants' assertion that disparate factual and employment settings exist among Plaintiffs and the Potential Plaintiffs;
- b. The parties' general dispute over the facts applicable to Plaintiff's Motion and this matter, generally;
- c. Defendants' assertion that Plaintiffs do not have the personal knowledge to support their allegations;
- d. Defendants' merits-based assertion regarding Plaintiff's exemption status;
- e. Defendants' arguments regarding the substance and method of Plaintiff's proposed

Notice form; and

- f. The additional and newly-submitted declarations of Juan Macias, Jose T. Zaragosa, Alejandro Neftali Castrejon, Jose Armando Espinoza, Manuel Olivarez Perez, Rafael Berber Macias, Francisco J. Macias, Jose Ramon Leon, Gabriel Macias, Luis Macias Leon, and Jesus Macias.
6. Given these circumstances, Plaintiff would be unduly prejudiced if he was not permitted the requested space to Reply to Defendants' Response.
7. On November 4, 2015, Plaintiff's counsel and counsel for Defendants conferred on this matter, and Defendants' counsel indicated that they oppose this Motion.
8. The relief requested is within the discretion of the Court. *Williams v. United States*, No. 4:98CR144, 2007 WL 2904183, at \*4 (W.D.N.C. Oct. 2, 2007) *adhered to on reconsideration*, No. 4:98CR144, 2008 WL 697633 (W.D.N.C. Mar. 12, 2008) and *aff'd*, 591 F. App'x 205 (4th Cir. 2015). Plaintiff has provided good cause for his modest request. *Thomas v. Porcher*, No. 1:12CV223, 2014 WL 4924269, at \*9 (M.D.N.C. Sept. 30, 2014) *aff'd*, 599 F. App'x 94 (4th Cir. 2015) (permitting leave to file 30 pages when applicable limit was 20 pages); *Shipman v. United Parcel Serv., Inc.*, No. 5:12-CV-589-F, 2013 WL 5525005, at \*1 (E.D.N.C. Oct. 3, 2013) *reconsideration denied*, No. 5:12-CV-589-F, 2013 WL 6622944 (E.D.N.C. Dec. 16, 2013) and *aff'd*, 581 F. App'x 185 (4th Cir. 2014) *cert. denied*, 135 S. Ct. 981, 190 L. Ed. 2d 836 (2015) (permitting leave to file 20 page reply when applicable limit was 10 pages).

WHEREFORE, Plaintiffs respectfully request that this Court grant a 10 page extension of the 10-page limit for Plaintiff's Reply in support of his Motion, not to exceed twenty (20) pages. Additionally, Plaintiff respectfully requests expedited consideration and ruling on this motion. Plaintiff has attached a proposed order to this motion.

Respectfully submitted,

*/s/ J. Forester* \_\_\_\_\_

**J. DEREK BRAZIEL**

State Bar No. 00793380

**J. FORESTER**

Texas Bar No. 24087532

**LEE & BRAZIEL, L.L.P.**

1801 N. Lamar Street, Suite 325

Dallas, Texas 75202

(214) 749-1400 phone

(214) 749-1010 fax

[www.overtimelawyer.com](http://www.overtimelawyer.com)

*/s/ Gilda A. Hernandez* \_\_\_\_\_

**GILDA A. HERNANDEZ, NCSB #36812**

315 S. Salem Street, Suite 310

Apex, NC 27502

[g hernandez@gildahernandezlaw.com](mailto:g hernandez@gildahernandezlaw.com)

Tel: (919) 741-8693

Fax: (919) 869-1853

#### ATTORNEYS FOR PLAINTIFF

#### Certificate of Conference

I hereby certify that I conferred with opposing counsel as to the relief requested herein

and was informed that the Defendants are opposed to the relief requested.

*/s/ J. Forester* \_\_\_\_\_

**J. FORESTER**

#### Certificate of Service

I hereby certify that on November 10, 2015, I caused the foregoing *Motion for Leave to File Excess Pages* to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those registered as CM/ECF participants

*/s/ J. Derek Braziel*

**J. DEREK BRAZIEL**